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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE DRON THOMAS, Defendant and Appellant.	A133564 (San Mateo County Super. Ct. No. SC069598A)

Defendant pleaded no contest to attempted robbery, robbery, and burglary and received the maximum sentence allowable under a plea agreement. Defendant contends the court abused its discretion by failing to find a sufficient factual basis to support the charges. He also contends the trial court erroneously imposed consecutive sentences for the attempted robbery and robbery counts. We affirm.

I. BACKGROUND

Defendant was charged by information with attempted robbery (Pen. Code, §§ 664/212.5, subd. (c); count 1), robbery (Pen. Code, § 212.5, subd. (c); count 2), two burglaries (Pen. Code, § 460, subd. (a); counts 3 & 4), and theft of personal property from an individual (Pen. Code, § 666; count 5). The information also alleged defendant had suffered two prior felony convictions (§§ 1203, subd. (e)(4); 1170.12, subd. (c)(1)), one prior strike conviction (Pen. Code, § 667, subd. (a)) and two prior prison convictions (Pen. Code, § 667.5, subd. (b)).

The following factual summary is from the probation officer's report: "Records of the Daly City Police Department reveal that on September 14, 2009, officers were

dispatched to [the bank] on the report of a robbery. Investigation revealed that the defendant entered [the bank], came up to a teller window and presented a note to the teller [stating] this was a robbery, made reference to having a gun and to give him all the money. The teller walked away from the window with the note to find the assistant bank manager. The defendant then went to another teller window and placed a paper bag on the counter. That teller had cash in her hand, and the defendant reached over the counter and took it from her. He then fled from the scene on foot through the nearby residential area. It was revealed that $7,640 was stolen from the bank. Witnesses observed red smoke coming from an intersection with money and red dye scattered on the road. Officers then made contact with a utility repairman who stated that the defendant was inside his company truck then fled. A red handprint was found on the truck. Police were then dispatched to the nearby home of David [M.] Mr. [M.] heard a noise outside his home and then observed the defendant climbing through the window. The victim grabbed a knife and demanded the defendant leave. The defendant stated he was being chased, but the victim said he did not care and again demanded the defendant leave. The defendant left through the same window he entered and went to the home of David [L.] Records revealed that a screen was removed from a window in [Mr. L.'s] home. Items were scattered throughout the home, and a camera bag (with camera, lens, and web camera), checkbook and shirt were missing. A taxi cab driver reported to police that he was dispatched to that location to pick up a subject. The defendant was observed leaving Mr. [L.'s] home, jumped into the taxi cab with a camera bag and told the driver 'go fast.' It was at that point that police arrived and made contact with the defendant. He was wearing a shirt stolen from the home of Mr. [L.] There was red dye on the defendant's pants, and a camera bag and bills with red dye were found on the backseat of the taxi cab. Police records revealed that all the stolen currency was recovered, as well as Mr. [L.'s] camera bag with camera and accessories and his checkbook." This account was drawn from testimony of bank employees and investigating officers at defendant's preliminary hearing.

Defendant pleaded nolo contendere to counts 1, 2, 4, and the special allegations, and all remaining counts were dismissed according to a negotiated plea agreement. Defense counsel stipulated to a factual basis for the plea, based on his review of the record, police reports, and discussions with his client. Aside from inquiring if the parties had stipulated to a factual basis, the trial court did not ask defendant to state the conduct underlying the charges or inquire further about the factual basis supporting defendant's plea. The trial court imposed consecutive sentences for the robbery and the attempted robbery for a total of 16 years 4 months in prison, the maximum sentence permitted under the plea agreement. Although the trial court extensively explained its decision to deny defendant's *Romero*[1] motion, it failed separately to explain its rationale for imposing consecutive sentences. Defendant did not object to the sentence.

Defendant filed a timely notice of appeal, and his application for certificate of probable cause was granted.

II. DISCUSSION

A. *Sufficiency of the Factual Basis Supporting the No Contest Plea*

Defendant contends there was an insufficient factual basis to support the robbery and burglary convictions, arguing there is no proof he took or attempted to take money by force or fear from either teller or intended to commit larceny or any other felony when he entered the second residence.

In *People v. Voit* (2011) 200 Cal.App.4th 1353 (*Voit*), the court recently held that by pleading guilty or no contest a "defendant waives an appellate challenge to the sufficiency of the evidence of guilt." (*Id.* at p. 1364.) The court reasoned " '[the plea] serves as a stipulation that the People need introduce no proof whatever to support the accusation: the plea ipso facto supplies both evidence and verdict.' " (*Id.* at p. 1363.) A finding of waiver is justified because an " '[a]ppellant may not enter into a negotiated disposition for an offense with a specified charging date, enjoy the fruits thereof, and then challenge the factual basis for the plea on appeal.' " (*Id.* at p. 1367.) We agree with and

[1] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

follow *Voit* in finding defendant waived any challenge to the sufficiency of evidence by pleading no contest.

Voit does permit a defendant to challenge the nature of the inquiry conducted by the trial court to establish a factual basis. (*Voit, supra,* 200 Cal.App.4th at pp. 1369–1370.) Pursuant to Penal Code section 1192.5, a trial judge, when accepting a negotiated plea, must satisfy himself or herself through inquiry that " 'the plea is freely and voluntarily made, and that there is a factual basis for the plea.' " (*People v. Holmes* (2004) 32 Cal.4th 432, 435 (*Holmes*).) The trial court is permitted to do so either through direct inquiry of the defendant or through inquiry of defense counsel. (*Id.* at p. 442.) Simply asking defense counsel to state a factual basis exists would be insufficient, but "[w]hen both parties stipulate on the record to a document, such as a police report, the factual basis requirement is met." (*Id.* at p. 440.) "[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea," and its decision will only be overturned for abuse of discretion. (*Id.* at p. 443.)

We conclude the trial court did not abuse its discretion in determining whether a sufficient factual basis existed to substantiate the plea. The court's inquiry under Penal Code section 1192.5 was sufficient because when defense counsel stipulated to a factual basis, he stated the stipulated facts were based on a review of the record, the police report, and discussions with his client. Once the court determined the parties had stipulated to a factual basis for the plea based on documents in the record, its inquiry was sufficient.

Even if the court's inquiry into the factual basis constituted error, it was harmless. The Supreme Court in *Holmes* found the criminal complaint satisfied the Penal Code section 1192.5 inquiry because it contained the charged offense, the names of the defendant and the victim, the date and location of the offense, and a brief description of the facts. The statute was held to be satisfied even though the trial court did not question the defendant regarding specific conduct, "nor did it request that defense counsel stipulate to a particular document that provides an adequate factual basis." (*Holmes,*

supra, 32 Cal.4th at p. 443.) The information here contained the same factors, which the trial court repeated to defendant in accepting his plea to each count.

B. *Separate Sentences for Attempted Robbery and Robbery*

Defendant challenges the imposition of two separate and consecutive prison terms, contending Penal Code section 654 prohibits separate sentences for both the attempted robbery and robbery charges. The Attorney General argues separate sentences were justified because these were separate crimes, consisting of an attempted robbery from the first teller and a completed robbery from the second teller. Alternatively, the Attorney General contends section 654 does not apply when multiple victims are involved.

Penal Code section 654 provides in relevant part that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (Pen. Code, § 654, subd. (a).) The proscription against double punishment in section 654 is applicable where the defendant's course of conduct violated more than one statute but nevertheless comprised a single act or indivisible transaction. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583.) A course of conduct is considered an indivisible transaction when the defendant acted "pursuant to a single intent and objective." (*Ibid.*) "A trial court's implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence." (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

We find no error in the trial court's imposition of consecutive sentences for the attempted robbery and robbery. Defendant entered the bank, went to a teller with whom he was familiar, handed her a note, and threatened to use a weapon. When the teller went to consult her supervisor without complying with defendant's demand, he leaned over the counter and grabbed a quantity of cash from the drawer and the hand of a second, nearby teller. The trial court could have concluded defendant's attempted robbery was complete when the first teller left without forfeiting any money and he formed a new criminal objective to rob the second teller after realizing his initial plan had failed.

Even if defendant's conduct constituted a single transaction, Penal Code section 654 is not applicable when multiple victims are involved. (*People v. Hall* (2000) 83 Cal.App.4th 1084, 1090; *People v. Centers* (1999) 73 Cal.App.4th 84, 99.) The multiple-victims rule exists because "the underlying purpose of section 654's proscription against multiple punishment 'is to insure that the defendant's punishment will be commensurate with his criminal liability.' " (*People v. Hall*, at p. 1088.) " 'A defendant who commits an act of violence with the intent to harm more than one person . . . is more culpable than a defendant who harms only one person.' " (*Ibid.*) "[R]obbery 'is violent conduct warranting separate punishment for the injury inflicted on each robbery victim,' and therefore the crime, by definition, can come within the multiple-victim exception in the case of multiple convictions involving multiple victims." (*Id.* at p. 1090.) Contrary to defendant's claim, his robbery attempt and robbery involved two victims, satisfying section 654's multiple-victim exception.

C. *Statement of Reasons for Imposing Consecutive Sentences*

Defendant contends the trial court abused its discretion by failing to articulate its reasoning for imposing consecutive sentences for the two robbery counts and by failing to give him a meaningful opportunity to object after the sentence was announced. The Attorney General asserts that any appellate claim regarding defendant's sentence was waived by defendant's failure to object.

Generally the trial court's exercise of sentencing discretion must be challenged in the trial court. In *People v. Scott* (1994) 9 Cal.4th 331, 353 (*Scott*), the Supreme Court concluded "the waiver doctrine should apply to claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices." Such errors are difficult to correct on appeal because "[t]he reviewing court cannot substitute its reasons for those omitted or misapplied by the trial court, nor can it reweigh valid factors bearing on the decision below." (*Id.* at p. 355.) "It is only if the trial court fails to give the parties any meaningful opportunity to object that the *Scott* rule becomes inapplicable." (*People v. Gonzalez* (2003) 31 Cal.4th 745, 752.)

A meaningful opportunity to object simply means that defendant or defense counsel has the opportunity to address the court regarding sentencing. (*People v. Zuniga* (1996) 46 Cal.App.4th 81, 84.) This requirement is satisfied by basic procedural due process. (*Ibid.*) In *Zuniga,* this requirement was satisfied where the defendant "was in court with counsel, was given the opportunity to address the court on the sentencing issue, heard the court pronounce sentence, stated that he understood it, and voiced no objections," and nothing in the record indicated the defense was precluded from objecting. (*Ibid.*)

Defendant and his counsel had ample opportunity to object to the imposition of the maximum sentence and to suggest alternatives, and they did so in their points and authorities in support of defendant's *Romero* motion. Although defendant now contends he was given no opportunity to object to the trial court's failure to state its reasons for imposing consecutive sentences, the trial court did nothing to prevent such an objection. On the contrary, when the court completed its pronouncement of sentence, an unidentified person addressed the court. Defense counsel was able to respond to this person but made no comments to the court.

Even if defendant's claim was properly raised on appeal, we would nonetheless conclude "it is 'not reasonably probable that a more favorable sentence would have been imposed in the absence of the error.' " (*Scott, supra*, 9 Cal.4th at p. 355.) "Only a single aggravating factor is required to impose the upper term [citation], and the same is true of the choice to impose a consecutive sentence [citation]." (*People v. Osband* (1996) 13 Cal.4th 622, 728–729.) In denying defendant's *Romero* motion, the court discussed its concerns regarding the vulnerability of the victims, the taking of a large quantity of money, as well as defendant's prior poor performance on probation and parole. (Cf. Cal. Rules of Court, rules 4.421(a)(3), (a)(9), (b)(5).) While the trial court should have specifically articulated its rationale for imposing defendant's sentences consecutively, it stated abundant reasons justifying the imposition of consecutive sentences when denying defendant's *Romero* motion. The court's extensive explanation for this denial demonstrates the court did not impose this sentence arbitrarily, and it would be an

unnecessary waste of judicial resources to remand to allow the court to restate the ample grounds for consecutive sentences.

D. *Ineffective Assistance of Counsel*

Because defendant fails to demonstrate a reasonable possibility of a better result had his counsel requested a statement of reasons justifying the imposition of consecutive sentences, his ineffective assistance claim also fails. (*People v. Waidla* (2000) 22 Cal.4th 690, 718, citing *Strickland v. Washington* (1984) 466 U.S. 668, 687–696.)

III. DISPOSITION

The judgment of the trial court is affirmed.

_____
Margulies, J.

We concur:

_____
Marchiano, P.J.

_____
Banke, J.